



**IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

Appeal No. EA/2011/0160

**BETWEEN:-**

**DR NICHOLAS TYRER**

**Appellant**

**And**

**THE INFORMATION COMMISSIONER**

**Respondent**

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**RULING**

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1. Dr Tyrer represents a group called the Friends of the South Pennines who are opposed to the de-registration of certain areas of common land around Rochdale. The applications to de-register have been the subject of public inquiries by the Planning Inspectorate (which is an executive agency of the Department for Communities and Local Government (DCLG)) in June 2010 and July 2011. It is Dr Tyrer's case that only the owner of land can apply to de-register it and that the applicant's title may have been registered at the Land Registry in error so that the application to de-register may have been invalid. On 27 October 2010 he requested the Planning Inspectorate to supply him with all correspondence between it and DEFRA and all its internal correspondence concerning the land ownership issue.

2. DCLG refused to comply with that request and Dr Tyrer applied to the Information Commissioner under section 50 of the Freedom of Information Act 2000. In a decision notice dated 29 June 2011 the Commissioner decided that the information requested was “environmental information” and that Dr Tyrer’s request was therefore covered by the Environmental Information Regulations 2004, but that DCLG were entitled to refuse to disclose it under regulation 12(4)(e), which applies to a request which involves the disclosure of “internal communications”. A factor relied on by the Commissioner in deciding that the public interest in maintaining that exception outweighed the public interest in disclosure of the information was that disclosure before a decision on the de-registration applications being issued would prejudice the proper conclusion of the inquiries.
3. On 25 July 2011 Dr Tyrer appealed against the Commissioner’s decision. In his grounds of appeal he stated:

**I understand that the principal argument for your decision was that the issues were still “live” because conclusion had not been reached on all the de-registration applications ... However, all of the de-registration Inquiries in the Rochdale area are now concluded and the Inspectors’ decisions have been made public. I would argue that there are now no grounds for withholding the information I requested originally.**

In his response the Commissioner maintained that this ground of appeal must fail because events occurring after a public authority’s decision on a request for information are not relevant to whether the public authority is entitled to rely on an exception or to the public interest balance.

4. I therefore issued directions on 8 September 2011 stating that I had formed the preliminary view that for the reason given by the Commissioner the appeal was hopeless and should be struck out but that Dr Tyrer could make written representations on the point provided he did so by 23 September 2011. In the event no representations have been received from Dr Tyrer and I remain of the view that the Commissioner is plainly right that the appeal is hopeless for the reason given which is set out in more detail in paragraphs 27 to 39 of his Response.

5. In those circumstances I now strike out Dr Tyrer's appeal under rule 8(3)(c) of the Tribunal's rules of procedure.

HH Judge Shanks

Tribunal Judge

10 October 2011